

## Department of the Army, DoD

## § 536.62

claim arises under the FTCA or AMCSA, only if the amount claimed exceeds \$50,000, or \$100,000 per incident.

### § 536.61 Advance payments.

(a) This section implements 10 U.S.C. 2736 (Act of September 8, 1961 (75 Stat. 488)) as amended by Public Law 90-521 (82 Stat. 874); Public Law 98-564 (90 Stat. 2919); and Public Law 100-465 (102 Stat. 2005)). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments, only under subparts C, F or J of this part, on claims not yet filed. See AR 27-20, paragraph 11-18 for information on emergency partial payments in personnel claims, which are not governed by 10 U.S.C. 2736.

(b) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) may make advance payments in amounts not exceeding \$100,000; the Commander USARCS, in amounts not exceeding \$25,000, and the authorities designated in §§ 536.786(4) and (5) and 536.101, in amounts not exceeding \$10,000, subject to advance coordination with USARCS, if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of \$10,000 will be forwarded to USARCS for processing.

(c) Under subpart J of this part, three-member foreign claims commissions may make advance payments under the FCA in amounts not exceeding \$10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

(d) An advance payment, not exceeding \$100,000, is authorized in the limited category of claims or potential claims considered meritorious under subparts C, F or J of this part, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of subparts C, F or J of this part.

(2) An immediate need for food, clothing, shelter, medical or burial expenses, or other necessities exists.

(3) The payee, so far as can be determined, would be a proper claimant, in-

cluding an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

(e) There is no statutory authority for making advance payments for claims payable under subparts D or H of this part.

NOTE TO § 536.61: For further discussion see DA Pam 27-162, paragraph 2-71.

### § 536.62 Action memorandums.

(a) *When required.* (1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action, see § 536.66. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction.

(2) In any claim which must be supported by an expert opinion as to duty, negligence, causation or damages, an expert opinion must be submitted upon request. All opinions must meet the standards set forth in Federal Rule of Evidence 702.

(3) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law or damages to justify the action being taken. (A model action is posted on the USARCS Web site; for the address see § 536.2(a).)

(b) *Memorandum of Opinion.* Upon completion of the investigation, the